

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel.
THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA,
99AG25112

Plaintiff,

v.

STONEBRIDGE BENEFIT SERVICES, INC.,
a Delaware corporation, fka Health Benefit Services,
Inc.,

Defendant.

Equity No. LE 69268

PETITION IN EQUITY

FILED
POLK COUNTY, IA
11 AUG 16 PM 1:06
JANET R. AICI COURT

The State of Iowa ex rel. Attorney General Thomas J. Miller, through the undersigned,
states as follows for its cause of action against Stonebridge Benefit Services, Inc.

INTRODUCTION

1. This lawsuit concerns a marketing scheme in which the credit cards and bank accounts of consumers are charged for memberships in discount buying clubs or other programs, even though the consumers do not know they are members, are not aware that they are being charged membership fees, and do not make any use whatsoever of the supposed benefits of membership.

2. Stonebridge Benefit Services, Inc.¹ ("Stonebridge" or "Defendant") is a Delaware corporation headquartered in Plano, Texas that markets a variety of membership programs to residents of Iowa. The membership programs vary, and include programs that offer savings on

¹ All references to Defendant are intended to include any predecessors in interest and/or names under which Defendant formerly operated, including but not limited to Health Benefit Services, Inc.

consumer goods, health and wellness products, or entertainment expenses. Defendant markets its membership programs by various means, including the Internet and telemarketing. The membership solicitations typically offer an attractive premium, such as a free \$25 Wal-Mart gift card, or “cash back” on an unrelated purchase. The memberships are typically offered on a free-trial basis, with a 30-day trial period to be followed by charges to a consumer’s credit card or bank account, if the consumer fails to cancel.

3. Many Iowans whose credit cards are charged or bank accounts are debited by Defendant periodically are unaware that they are members of the programs in question. As a result, a number of consumers absorb the losses, sometimes repeatedly over extended periods, without realizing that they are paying for a membership program and without using any of the membership services for which they are paying. This anomalous situation arises from the way Defendant markets its memberships. For example, Defendant arranges with established online marketers to present “cash back” offers to consumers who have just completed a transaction on that other marketer’s website. A consumer may think the cash-back offer is from the familiar Internet merchant, and may uncritically click through in pursuit of the perceived rebate. By doing so, however, the consumer is deemed to have accepted a membership in a buying club and to have authorized membership charges against the same credit card or bank account involved in the initial transaction. Comparable arrangements involve other marketing channels. For example, Iowa consumers have been charged for unwanted memberships that resulted from telemarketing contacts.

4. Consumers may not object to unwanted and/or unauthorized charges for various reasons; for example, they may not notice the relatively small monthly charges (e.g., \$9.95 to

\$14.95), may misunderstand what a given charge relates to, or may assume that an unfamiliar charge was incurred by another member of the household.

5. Substantially the same practices that Defendant employs have been denounced by the Commerce Committee of the United States Senate. In a Staff Report dated November 16, 2009 (“Staff Report”), the Committee focused on three of the largest marketers of these types of memberships (Vertrue, Inc., Affinion Group, Inc., and Webloyalty.com, Inc.), stating that the companies “use highly aggressive sales tactics to charge millions of American consumers for services the consumers do not want and do not understand they have purchased.”² In a May 19, 2010 Supplemental Report (“Supplemental Report”), the Committee accused the operations of employing a basic two-step business model, namely, “(1) use deceptive sales tactics to charge consumers’ credit and debit card accounts, and (2) after consumers discover the unauthorized charges, refund as little of their money as possible.”³ The Attorney General believes that Stonebridge’s marketing practices are highly similar to the condemned practices in all material respects, and result in comparable victimization of consumers.

6. In marketing its memberships, Defendant does not comply with Iowa’s Buying Club Memberships Law. That law requires that membership sales transactions include specified notices, disclosures, and contracts. The Attorney General alleges that such requirements of the Buying Club Memberships Law apply to the membership sales conducted by Defendant, and that

2

http://commerce.senate.gov/public/?a=Files.Serve&File_id=cf4a2051-9650-4c5a-bf51-8e325fe6112d

3

http://commerce.senate.gov/public/?a=Files.Serve&File_id=439184c5-0965-4bb9-aa98-4a114b00a42e

compliance by Defendant with that law would spare many Iowa consumers from inadvertently paying for unwanted and unused membership programs.

7. Iowa's Consumer Fraud Act, Iowa Code § 714.16 ("CFA"), prohibits unfair and deceptive practices, and requires that all important aspects of a transaction be properly disclosed; the Attorney General alleges that the manner in which Defendant markets its membership programs violates the CFA, and that compliance with that Act would further serve to ensure that Iowa consumers are not the victims of unwanted and unauthorized membership charges.

VENUE

8. Venue is proper in Polk County, Iowa, because Defendant engaged in the activities that are the subject of this Petition in Polk County, Iowa. Moreover, upon information and belief Defendant does business in Polk County and one or more victims of the practices in question reside in Polk County. Iowa Code §§ 552A.5 and 714.16 (10).

PARTIES

9. The Iowa Attorney General is authorized to bring this action on behalf of the State of Iowa by Iowa Code §§ 552A.5 and 714.16 (7).

10. Defendant was incorporated in the State of Delaware in 1994 as "Health Benefit Services, Inc.," and changed its name to Stonebridge Benefit Services, Inc. effective October 1, 2004. Stonebridge's website states that it is "an AEGON company."

JURISDICTION

11. Iowa's Buying Club Memberships law, Iowa Code Ch. 552A ("the Buying Club

Law” or “BCL”) provides in pertinent part:⁴

552.A.1 Definitions

As used in this chapter, unless the context otherwise requires:

1. “*Buying club*” means a corporation, partnership, unincorporated association, or other business enterprise which sells or offers for sale to the public generally memberships or certificates of membership.
2. “*Contract*” means the agreement by which a person acquires a membership in a buying club.
3. “*Membership*” means certificates, memberships, share, bonds, contracts, stocks, or agreements of any kind or character issued upon any plan offered generally to the public entitling the holder to purchase merchandise, materials, equipment, or service, either from the issuer or another person designated by the issuer, either under a franchise or otherwise, whether it be at a discount, at cost plus a percentage, at cost plus a fixed amount, at a fixed price, or on any other similar basis.

552A.3 Right of cancellation - requirement of writing.

The requirements of sections 555A.1 through 555A.5, relating to door-to-door sales, shall apply to sales of buying club memberships, irrespective of the place or manner of sale or the purpose for which they are purchased. In addition to the requirements of chapter 555A, a contract shall not be enforceable against a person acquiring a membership in a buying club unless the contract is in writing and signed by the purchaser.

552.A.4 Limitation on membership period.

A contract shall not be valid for a term longer than eighteen months from the date on which the contract is signed. However, a buying club may allow a member to convert the contract into a contract for a period longer than eighteen months after the member has been a member of the club for at least one year. The duration of the contract shall be clearly and conspicuously disclosed in the contract in boldface type of a minimum size of the fourteen points.

552A.5 Remedies

1. A violation of this chapter is a violation of section 714.16, subsection 2, paragraph “a”.
2. The rights, obligations, and remedies provided in this chapter shall be in addition to any other rights, obligations, or remedies provided by law or in equity.

...

12. In addition, Iowa Code § 552A.2 sets forth a list of exemptions from application of

⁴ Portions of statutes highlighted in italics or bold in this Petition are highlighted in the same manner in the Code of Iowa.

the Buying Club Law, but Plaintiff alleges that none serves to exempt the conduct alleged herein.

13. As noted in paragraph 11 above, the Buying Club Law incorporates various substantive requirements of the Door To Door Sales Act, namely Iowa Code §§ 555A.1 through 555A.5, with the proviso that such requirements apply "irrespective of the place or manner of sale or the purpose for which they are purchased." The Door To Door Sales Act provides in pertinent part:

555A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Business day*" means any calendar day except Saturday, Sunday, or public holiday, including holidays observed on Mondays.
2. "*Consumer goods or services*" means goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.
3. a. "*Door-to-door sale*" means a sale, lease, or rental of consumer goods or services with a purchase price of twenty-five dollars or more, whether under single or multiple contracts, in which the seller or the seller's representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. Door-to-door sale does not include a transaction:
 - (1) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis.
 - (2) In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. § 1635, or rules issued pursuant to this chapter.
 - (3) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days.
 - (4) Conducted and consummated entirely by mail or telephone, and

without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services.

(5) In which the buyer has initiated the contact and specifically requested the seller to visit the buyer's home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion.

(6) Pertaining to the sale or rental of real property, to the sale of insurance and prepaid health service plans, or to the sale of securities or commodities by a broker-dealer registered with the securities and exchange commission.

b. "*Door-to-door sale*", irrespective of the place or manner of sale, also means the following:

(1) A sale of funeral services or funeral merchandise regulated under chapter 523A.

(2) A sale of a social referral service or an ancillary service.

For purposes of this subparagraph, "social referral service" means a service for a fee providing matching or introduction of individuals for the purpose of dating, matrimony, or general social contact not otherwise prohibited by law, and "ancillary service" means goods or services directly or indirectly related to or to be provided in connection with a social referral service.

4. "*Place of business*" means the main or permanent branch office or local address of a seller.

5. "*Purchase price*" means the total price paid or to be paid for the consumer goods or services, including all interest and service charges.

6. "*Seller*" means any person engaged in the door-to-door sale of consumer goods or services.

555A.2 Contract.

Every seller shall furnish the buyer with a fully completed receipt or copy of any contract pertaining to a door-to-door sale at the time of its execution, which is in the same language as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in boldface type of a minimum

size of ten points, a statement in substantially the following form:

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

555A.3 Cancellation.

Every seller shall furnish each buyer, at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "Notice of Cancellation", which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point boldface type the following information and statements in the same language as that used in the contract:

NOTICE OF CANCELLATION

.....
(enter date of transaction)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller or if the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to, (Name of seller) at (Address of seller's place of business) not later than midnight of (Date).

I hereby cancel this transaction.

.....
(Date)

.....
(Buyer's signature)

555A.4 Duties of seller.

A seller shall:

1. Furnish two copies of the notice of cancellation to the buyer, and complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.
2. Not include in any contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this chapter including specifically the right to cancel the sale in accordance with the provisions of this chapter.
3. Inform each buyer orally, at the time the buyer signs the contract or purchases the goods or services, of the buyer's right to cancel.
4. Not misrepresent in any manner the buyer's right to cancel.
5. Honor any valid notice of cancellation by a buyer and within ten business days after the receipt of notice shall refund all payments made under the contract or sale, return any goods or property traded in, in substantially as good condition as when received by the seller, and cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.
6. Not negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the seventh business day following the day the contract was signed or the goods or services were purchased.
7. Within ten business days of receipt of the buyer's notice of cancellation notify the buyer whether the seller intends to repossess or to abandon any shipped or delivered goods.

555A.5 Effect on indebtedness.

Rescission of any contract pursuant to this chapter or the failure to provide a copy of the contract to the buyer as required by this chapter shall void any contract, note, instrument, or other evidence of indebtedness executed or entered into in connection with the contract and shall constitute a complete defense in any action based on the contract, note, instrument or other evidence of indebtedness brought by the seller, the seller's successors or assigns unless a

successor or assignee of the seller after the seventh business day following the day the contract was signed has detrimentally relied upon a representation of the buyer that the contract has not been rescinded. This section shall not affect the rights of holders in due course of checks made by the buyer.

14. As noted above, the Buying Club Law provides that a violation of Iowa Code Ch. 552A is a violation of Iowa Code § 714.16 (2)(a) of the Iowa Consumer Fraud Act, which provides in pertinent part:

The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

15. A violation of Iowa Code § 714.16 (2)(a) is expressly declared to be an unlawful practice under the Consumer Fraud Act, which gives rise to certain enforcement options and penalties under Iowa Code § 714.16 (7). That latter subsection provides, in pertinent part:

... If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys ... which have been acquired by means of a practice declared to be unlawful by this section ...

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. In addition, on the motion of the attorney general or its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a ... permanent injunction issued under

authority of this section.

ADDITIONAL FACTUAL ALLEGATIONS

16. The memberships sold to Iowa residents have included (without limitation): BackPorch Home and Garden; Everyday Bargains; Experts-on-Call; Fun Family Rewards/Select; Home & Auto Protection Plan; LeisurePlus/Select; MotorPlus; Perfect Home Rewards/Select; Pet Club; PlanPlus/Select; SavingsSolution; and Savings2Go.

17. Defendant has sold more than 50,000 memberships to Iowa residents beginning at least as early as September of 2004, generating net revenues (total sales minus refunds) of about \$4 million. A consumer complaint file in the Consumer Protection Division includes a response letter from Stonebridge indicating that in September of 2004 the Iowa complainant made a phone call to order a product featured in an infomercial, and was then enrolled in two Stonebridge programs, namely LeisurePlus and PlanPlus. Using the bank account number the consumer had used to place the infomercial order, Stonebridge then made monthly withdrawals totaling several hundred dollars over the following three years. The consumer did not become aware of the withdrawals, which the consumer regarded as unauthorized, until about July 2007, by which time the withdrawals had caused overdrafts to the consumer's account. Although Stonebridge initially attempted to resolve the situation by returning only a small portion of the consumer's money, the Consumer Protection Division was ultimately able to obtain a full refund of the membership payments taken from the consumer's account.

18. Other Iowans have also complained about Defendant's practices, asserting that they were being billed for memberships that they did not believe they had ever voluntarily agreed to enroll in. Similar to the situation described in the preceding paragraph, some such complainants

did not realize that they had been paying for memberships until charges were discovered on their credit card bills or bank statements, after months or even years of inadvertent payments for unused memberships. For example, the complaint attached as Attachment I⁵ involves a Muscatine man who discovered in 2009 that his recently deceased mother “was unknowingly paying bank debits for two years to PlanPlus and Savings2Go.” This complaint also indicates what Stonebridge regarded as adequate authorization to begin debiting this elderly woman’s bank account for membership fees. After being played a recording of the phone call that enrolled his mother as a member, the man stated:

“Listening to my mother speaking to your telemarketers was a sickening experience. Did it mean anything to you when my mother didn’t know her own address or phone number? Did it mean anything to you when she said, ‘I’m getting all confused’? Though my mother was calling about a ‘free offer,’ the first telemarketer keyed in on my mother’s vulnerability and kept selling everything she could. I wonder how you’d feel if it was your mother’s voice on a recorded telephone conversation, agreeing to something she didn’t understand.”

“It was obvious my mom didn’t realize tha[t] she was agreeing to perpetual debits. My mom didn’t know what the word ‘debit’ meant. One telemarketer[] used the words ‘Risk Free.’ That’s false. The second PlanPlus telemarketer said, ‘You have to say ‘Yes,’” when my mother clearly didn’t know what she was agreeing to.”

19. The Better Business Bureau (“BBB”) has received numerous complaints from consumers about Defendant’ practices.⁶ For example, as of August 2011, the BBB’s website indicated that 424 such complaints had been closed in the preceding 36 month period. Of those, the largest single category was “Billing or Collection Issues” (210 complaints), which upon

⁵ Certain identification and financial information has been redacted.

⁶ The BBB website referred to “Stonebridge Benefit Services, Inc. aka AEGON Direct Marketing Services, Inc.,” and the complaint data referred to above appeared under the latter name.

information and belief consists *inter alia* of “Unauthorized credit card charges” and “Unauthorized bank debits.” Although these BBB figures are nationwide, upon information and belief they include complaints from Iowans and reflect the experiences of Iowa consumers.

20. In April of 2011, the Attorney General obtained from Stonebridge a list of the twenty then-current members of a Stonebridge program who had been members for the longest period of time. These longer-term members could be expected to represent Stonebridge’s most satisfied customers, who were presumably paying month after month because they were happy with the benefits of membership. Upon receiving the list, Investigator Al Perales of the Consumer Protection Division made phone contact with eleven of the consumers on the list,⁷ all of whom had been billed as members for the preceding seven or eight months through their credit cards or bank accounts. Of these eleven members, seven had been enrolled as members online, and four had been enrolled over the phone. Remarkably, only two of the eleven were aware of their status as members; only one of the eleven indicated that charges to their credit cards or bank accounts had been authorized; none of the eleven had made any use of any membership benefits; and all eleven indicated that they wanted a full refund.

The Buying Club Law

21. Upon information and belief, although Defendant has at all relevant times been subject to Iowa’s Buying Club Law,⁸ Defendant has never complied with the requirements of

⁷ No contact with the other nine on the list was made at that time.

⁸ As persuasive but not binding authority relating to the application of the BCL in this context, see Judge Robert A. Hutchison’s Ruling October 5, 2009 Ruling On Plaintiff’s Third Motion For Summary Judgment in *State of Iowa ex rel. Miller v. Vertrue, et al.*, attached hereto as Attachment II.

Iowa Code §§ 555A.1 through 555A.5. In particular and without limitation, Defendant has never furnished buyers with a written document in compliance with Section 555A.2; has never furnished buyers the Notice of Cancellation forms required by Section 555A.3; and has never informed buyers orally of their right to cancel or performed the other duties of sellers set forth in Section 555A.4.

22. Compliance by Defendant with the Buying Club Law would have served to provide consumers with clear notice of the financial obligations which Defendant sought to impose, and would have spared many consumers from unknowingly making ongoing periodic payments for a membership they did not want and did not use.

The Consumer Fraud Act

23. Upon information and belief, a substantial volume of Defendant's marketing has relied on practices and features which, either in themselves or in the manner and combinations employed by Defendant, are unfair, deceptive, and otherwise in violation of the CFA, including (without limitation):

a) *Post-transaction marketing*, in which Defendant arranges to solicit another merchant's customers in the wake of a purchase from the other merchant; for example, consumer complaints indicate that Defendant has had such an arrangement with JCPenney to market memberships to online purchasers, and with businesses generating telephone orders through television infomercials.

b) *Data pass*, in which credit card information and other billing data are passed from the initial online marketer to Defendant, without the consumer having to provide complete billing information anew; these "data pass" practices were evidently carried on in direct violation of MasterCard's and Visa's rules for credit card and debit card transactions.

c) *Free-to-pay conversion*, in which consumers are offered a program on a free basis for some period of time (e.g., 30 days), after which the consumer's failure to cancel results in credit card or bank charges.

d) *Premium offers*, such as “\$10 off” promises or free gift cards, the pursuit of which has resulted in unexpected membership enrollments and unwanted charges; efforts to redeem such premiums are sometimes made more difficult than they need to be, in order to discourage consumers from actually getting what enticed them into the transaction.⁹ (a process sometimes referred to as “breakage.”

e) *Restrictive refund policies* that keep consumers who inadvertently became members from receiving a full refund of the payments they made.

24. The fact that many consumers are being victimized by the marketing practices in question may be underscored by a low rate of usage by members of the purported benefits of membership. Upon information and belief, a substantial number of the members of Defendant’s programs make little or no use of such benefits.

25. Defendant’s marketing inadequately conveys the nature of the purported sales transaction to consumers who are subsequently charged. Solicitations have failed to adequately convey *inter alia* the identity of the membership provider, the nature of the product, and the terms of the transaction, and have led to unexpected charges that consumers regarded as unauthorized.

26. Upon information and belief, a substantial portion of the above-described solicitations have also misled consumers by falsely assuring them that the transaction was risk free, or by using some form of premium to lure consumers, who then find the path to obtaining the premium obstructed by undisclosed obstacles.

27. Upon information and belief, Defendant has also employed deceptive and unfair practices in connection with the cancellation and refund policies associated with the marketing of membership programs, to impede the consumer victims’ efforts to obtain full refunds of all

⁹ The incidence of consumers not redeeming a premium held out to them is sometimes referred to as “breakage.”

membership payments made.

28. Upon information and belief, Iowans age 65 or older are particularly susceptible to being victimized by Defendant's violations of the Consumer Fraud Act, in that the underlying conduct is more likely to exploit persons with age-related perceptual, memory, or cognitive limitations.

29. Neither all nor any part of the application for injunctive relief herein has been previously presented to and refused by any court or justice. Iowa R. Civ. P. 1.1504.

30. In an action by the state, no security shall be required of the state. Iowa R. Civ. P. 1.207.

31. The affidavit of Consumer Protection Division Investigator Al Perales is attached to this Petition as Attachment III, in support of the request for a temporary injunction.

COUNT I

VIOLATION OF THE BUYING CLUB MEMBERSHIPS ACT

32. Paragraphs 1 through 31 are incorporated herein by reference.

33. Defendant's marketing of memberships violates Iowa Code Ch. 552A.

34. Pursuant to Iowa Code § 552A.5 (1), a violation of the Buying Club Law is a violation of the Iowa Consumer Fraud Act, Iowa Code § 714.16 (2)(a).

COUNT II

VIOLATION OF THE IOWA CONSUMER FRAUD ACT

35. Paragraphs 1 through 31 are incorporated herein by reference.

36. Defendant's acts and practices relating to the marketing of memberships constitute unfair and/or deceptive practices in violation of section 714.16 (2)(a) of the Iowa Consumer

Fraud Act, and otherwise violate that Act.

COUNT III

CONSUMER FRAUDS COMMITTED AGAINST OLDER PERSONS

37. Paragraphs 1 through 31 above are incorporated herein by reference.

38. On information and belief, many of the Consumer Fraud Act violations for which Defendant are responsible were committed against older persons and give rise to the additional civil penalty provided for in section 714.16A.

PRAYER

Plaintiff prays the Court grant the following relief:

A. Pursuant to Iowa Code §§ 552A.5 and 714.16 (7), and upon further request by Plaintiff addressed to the Court, enter a temporary restraining order and preliminary injunction restraining Defendant and Defendant's directors, officers, principals, partners, employees, agents, servants, representatives, subsidiaries, affiliates, successors, assigns, merged or acquired predecessors, parent or controlling entities, and all other persons, corporations and other entities acting in concert or participating with Defendant who have actual or constructive notice of the Court's injunction, from engaging in the violations of law alleged in this Petition or from otherwise violating the Buying Club Law.

B. Pursuant to Iowa Code §§ 552A.5 and 714.16 (7), after trial on the merits, make permanent the above-described injunctions, expanding their provisions as necessary by including *inter alia* such "fencing in" provisions as are reasonably necessary to ensure that Defendant and other enjoined persons and entities do not return to the unlawful practices alleged herein, or commit comparable violations of law.

C. Pursuant to Iowa Code §§ 552A.5 and 714.16 (7), enter judgment against Defendant for amounts necessary to restore to Iowa consumers all money acquired by means of acts or practices that violate the Buying Club Law and/or the Consumer Fraud Act.

D. Pursuant to Iowa Code §§ 552A.5 and 714.16 (7), enter judgment against Defendant for such additional funds as are necessary to ensure complete disgorgement of all ill-gotten gain traceable to the unlawful practices alleged herein.

E. Pursuant to Iowa Code §§ 552A.5 and 714.16 (7), enter judgment against Defendant for a civil penalty of up to \$40,000.00 for each separate violation of law.

F. Pursuant to Iowa Code § 714.16A, enter judgment against Defendants for an additional civil penalty not to exceed \$5,000.00 for each violation of the Consumer Fraud Act committed against an older person.

G. Award Plaintiff interest as permitted by law.

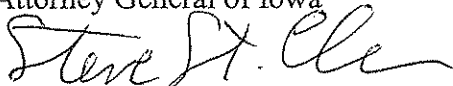
H. Pursuant to Iowa Code §§ 552A.5 and 714.16 (11), enter judgment against Defendant for attorney fees, state's costs and court costs.

I. Retain jurisdiction as necessary to ensure full compliance with the Court's rulings.

J. Grant such additional relief as the Court deems just and equitable.

Respectfully submitted,

Thomas J. Miller
Attorney General of Iowa



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ATTORNEYS FOR PLAINTIFF

Duba, Meinautje

From: Dan R [REDACTED]
Sent: Wednesday, September 16, 2009 9:43 AM
To: Customer Relations DMS
Subject: Re: FW: Consumer Contacted You via The BBB Website
Attachments: Statement2.jpg; Savings2GoDebit.jpg; PlanPlusDebit.jpg


Statement2.jpg
(474 KB)


Savings2GoDebit.jpg
(183 KB)


PlanPlusDebit.jpg
(180 KB)

September 16, 2009

Dear AEGONUSA Consumer Affairs Department Representative:

As you requested, here is my mother's name and address

J [REDACTED] R [REDACTED] (deceased June 11, 2009) [REDACTED] (Assisted Living) Apartment [REDACTED]
[REDACTED]
Burlington, IA 52601

Her phone number (disconnected now) 319-[REDACTED]

Attached are two debit requests that Savings2Go and PlanPlus sent to Farmer's & Merchants Bank & Trust in Burlington, Iowa. F & M Bank & Trust sent me copies of these debit requests when I first began to investigate where the unexpected charges of \$9.95 and \$12.95 were going. The bank did not have any written authorization from my mother to allow these debits.

I do not believe my mother ever authorized these debits. I always thought they were checks she had written. I am also sending you a copy of a statement from her (now closed) checking account. As you can see, neither PlanPlus nor Savings2Go are ever mentioned by name on the statement.

In the approximately two years J [REDACTED] R [REDACTED] was billed by these two businesses for a total of \$377.55 according to a service representative named Emile, she never received any written communications or membership cards. She never used either of these "memberships" because she didn't know she was a member.

I have already faxed PlanPlus and Savings2Go twice. The first fax on August 20, 2009, included a copy of my mother's death certificate. I have not received any response from these companies.

Therefore, I would like a refund check of all the money she sent you: \$377.55. As I am the acting executor of my mother's estate, this check should be sent to me. My address is:

Dan R [REDACTED]
[REDACTED]
Muscatine, IA 52761

If I do not receive this refund, I will have no choice but to contact the various appropriate consumer protection agencies.

Sincerely,

Dan R [REDACTED], son of J [REDACTED] R [REDACTED]

--- On Tue, 9/15/09, Customer Relations DMS <CustRel@AEGONUSA.com> wrote:

> From: Customer Relations DMS <CustRel@AEGONUSA.com>

> Subject: FW: Consumer Contacted You via The BBB Website

> To: danr [REDACTED]
> Date: Tuesday, September 15, 2009, 2:55 PM

> Dear Mr. R [REDACTED]

> Thank you for your email which we
> received thru the BBB Website.
> We will be happy to research information pertaining to your mother's
> memberships Plan Plus/Savings2Go. However, we conducted a search of
> our system using your information we have "J [REDACTED] R [REDACTED]"
> and we are
> in need of additional information to locate your specific inquiry. If
> you can please provide us with additional information, such as your
> mother's address or previous address, phone number or a bank statement
> which shows the charges of Plan Plus/Savings2Go. We will use this
> information to search our system again. If you prefer, you can
> contact us by phone at 1-800-527-5517, option 2, by fax at
> 972-881-4027 or by email to custrel@aegonusa.com.

> We look forward to receiving the
> additional information requested.

> Thank you,

> Consumer Affairs
> Department

> From: BBB Website
> [mailto:dallas.bbb@bbb-email.org]

> Sent: Friday,
> September 11, 2009
> 2:05 PM

> To: Customer
> Relations DMS

> Subject: .
> Consumer Contacted You
> via The BBB Website

> Email: danr [REDACTED]
>
> Phone:
>
> To: AEGON
>
> Subject: Refund of bank debits (\$377.55) for J [REDACTED] R [REDACTED]
> (deceased)
>
>
>

> Below is a copy of a fax I sent Sept. 1, 2009. In summary, my mother,
> who died June 11, 2009, was unknowingly paying bank debits for two
> years for PlanPlus and Savings2Go, neither of which ever sent her a
> card or any kind of written communication. As her son and acting
> executor of her business affairs, I would like a refund of the entire
> amount of \$377.55. Otherwise I will contact the appropriate consumer
> protection agencies, such as the Better Business Bureau.
>

> Dan R [REDACTED] danr [REDACTED]
>
>
>

> September 1, 2009
>
> [REDACTED]
>
>

> Muscatine ,
> IA 52761
>
>
>

> Customer Service
>
> PlanPlus / Savings 2 Go
>
> fax 972-881-4527
>
> 2700 West Plano Parkway
>
> Plano , TX
> 75075
>
>
>

> Dear Sir or Madam:
>
>
>

> This is a follow-up fax in regard to a previous fax I sent August 20,
> 2009, which was accompanied by a copy of my mother's death
> certificate.
> In that fax I explained my mother's situation living in assisted
> living. I would help her pay her bills with checks, and I never
> realized what these debits were. They showed up on her checking
> account as unnumbered checks with an asterisk indicating they were out
> of sequence. I assumed they were simply checks she had written.
>
>
>

> We do not really know how you learned of her checking account number
> in the first place. F & M Bank and Trust does not have any written
> authorization from either you or my mother to make these monthly
> debits.
>
>
>

> She did not ever receive a PlanPlus card or a Savings 2 Go card, nor
> did she ever ever receive any written literature from you. She never
> made any claims for any of your services or offers.

> As my first fax stated, as executor of my mother's estate, I would
> like you to please send back all the money you debited from her
> checking account over two years. Emile, one of your customer service
> reps, said these debits totaled \$377.55.

> Please respond at your earliest convenience to my email
> address
> (danr[REDACTED]) to verify that you received this
> email and my first
> email of August 20, 2009. When will you be mailing me a
> check for \$377.55?

> Please ignore this fax if you have already sent this
> refund.

> Sincerely yours,
> Dan R [REDACTED]

FARM BANK
FARM TRUST

1000 1/2 N. Main St. - 1st Fl.
Muscataine, IA 52761
(319) 261-1111

120 [REDACTED]
ACCOUNT: [REDACTED]
DOCUMENTS:

PAGE: 1
09/04/2009
0

000306

J [REDACTED] R [REDACTED]
DAN [REDACTED]
[REDACTED]
MUSCATINE IA 52761

<C> <T> 31
0
0

*** FINAL STATEMENT ***

FOR YOUR CONVENIENCE, EFFECTIVE 5/20/09, THE CUT-OFF TIME FOR ALL BANKING
TRANSACTIONS HAS BEEN MOVED TO THE CLOSE OF BUSINESS. THIS MEANS THAT
YOUR OVER THE COUNTER TRANSACTIONS WILL BE PROCESSED THE SAME BUSINESS
DAY. EXCLUDING SATURDAY, SUNDAY AND FEDERAL HOLIDAYS.

DISTINCTIVE CHECKING ACCOUNT [REDACTED] 42

LAST STATEMENT 08/03/09 12,487.55
1 CREDITS .15
4 DEBITS 12,487.70
THIS STATEMENT 09/04/09 .00

DESCRIPTION	OTHER CREDITS	DATE	AMOUNT
INTEREST		08/21	.15

CHECK #	DATE	AMOUNT	CHECK #	DATE	AMOUNT	CHECK #	DATE	AMOUNT
6185	08/11	10,000.00	9999	08/06	12.95	9999	08/18	9.95

(*) INDICATES A GAP IN CHECK NUMBER SEQUENCE

DESCRIPTION	OTHER DEBITS	DATE	AMOUNT
CLOSING WITHDRAWAL		08/21	2,464.80

THE DISCLOSURE PERIOD FOR THIS ACCOUNT IS 08/04/09 THRU 08/20/09.

INTEREST

AVERAGE LEDGER BALANCE:	6,592.01	INTEREST EARNED:	.15
AVERAGE AVAILABLE BALANCE:	6,592.01	DAYS IN PERIOD:	17
INTEREST PAID THIS PERIOD:	.15	ANNUAL PERCENTAGE YIELD EARNED:	.05%
INTEREST PAID 2009:	12.20		

*** CONTINUED ***

FDIC

PRE-AUTHORIZED DEBIT		PRE-AUTHORIZED	
PAY TO THE ORDER OF		072-DD58	
SAVINGS2GO		ENTRY DATE 07-06-09	
1030 1030		8884480166 \$12.95	
FARMERS & MERCHANTS BK & TR		TRACE 187238006	
BURLINGTON IA 52601		ACCT.	
TRACE 187238006			
⑆073900580⑆		⑆000000⑆	

Account 00000000
 Amount 12.95
 Post Date 20090707
 Sequence 009003165

Routing 07390
 OFS 0
 Check 0000000000
 Tran 000051

Redwine, Patsy

From: Dan R [danr [REDACTED]]
Sent: Wednesday, September 30, 2009 10:37 AM
To: Redwine, Patsy
Subject: Re: Savings2Go & PlanPlus

Dear Ms. Redwine:

I just spoke with you on the phone. Listening to my mother speaking to your telemarketers was a sickening experience. Did it mean anything to you when my mother didn't know her own address or phone number? Did it mean anything to you when she said, "I'm getting all confused"? Though my mother was calling about a "free offer," the first telemarketer keyed in on my mother's vulnerability and kept selling everything she could.

I wonder how you'd feel if it was your mother's voice on a recorded telephone conversation, agreeing to something she didn't understand.

It was obvious my mom didn't realize that she was agreeing to perpetual debits. My mom didn't know what the word "debit" meant. One telemarketer used the words "Risk Free." That's false. The second PlanPlus telemarketer said, "You have to say 'Yes,'" when my mother clearly didn't know what she was agreeing to.

My mother also bought books from Publisher's Clearing House. At least this company accepted the books I returned and refunded my mother's money when they realized she had glaucoma and could hardly read.

So, like I have previously said, I would like the remainder of my mother's money back that you got by debiting her checking account for two years. These debits always showed up as unnumbered checks, so we assumed my mother had written them. She never used PlanPlus or Savings2Go. She never received any membership kit or plastic ID card. Neither her pharmacy or optometrist had ever heard of PlanPlus, although you list them on your web page.

All of these things add up to this: Deceptive sales practices and fraud. You conned my mother out of \$377.55.

Considering the hundreds of complaints listed on the internet about your programs, it's hard to believe you are still in business. You will be hearing from a few consumer advocates about this. I feel a responsibility to warn others about these programs.

I look forward to receiving the rest of my mother's money, which comes to \$298.90.

Sincerely,

Dan R [REDACTED]
Muscatine, IA 52761

--- On Wed, 9/23/09, Redwine, Patsy <PREDW1@AegonUSA.com> wrote:

> From: Redwine, Patsy <PREDW1@AegonUSA.com>
> Subject: Savings2Go & PlanPlus
> To: danr [REDACTED]
> Date: Wednesday, September 23, 2009, 7:22 AM
>
> September 23, 2009
>
> Dan R [REDACTED]
>
> Via Email: danr [REDACTED]
>
> Member: J [REDACTED] R [REDACTED]
>

> Membership Numbers: Savings2Go
> 0551207840

> PlanPlus 0162209316

> Dear Mr. R [REDACTED]

> Your email to the Consumer Affairs
> Department regarding the above
> referenced memberships, was forwarded to me for reply. I do hope the
> following information proves beneficial.

> Savings2Go is a members saving
> program. Savings2Go is offered to
> potential customers who call and place an Infomercial order. The
> records supplied to us indicate that a woman who identified herself as
> J [REDACTED] R [REDACTED] placed an order for a product on August 25, 2007. The
> records supplied to us show that J [REDACTED] R [REDACTED] agreed to enroll in
> Savings2Go. The offer was the first 30 days were at no cost to Ms.
> R [REDACTED] to enable her to review the services provided to her by the
> membership. At the time of the order, she provided the account number
> she was using for her order as well as the Savings2Go membership.
> As verification of the enrollments, Ms. R [REDACTED] was asked to provide the
> last four digits of the account number she was using for the
> membership. The last four digits provided by Ms. R [REDACTED] were "[REDACTED]".
> Savings2Go does not offer or administer the infomercial products
> offered; therefore, we are unable to provide any information
> pertaining to their products.

> PlanPlus is a non-insurance health care discount program. Our records
> indicate J [REDACTED] R [REDACTED] was enrolled in the PlanPlus program on August
> 12, 2008, when we contacted her at 319-[REDACTED] and offered the
> membership. The offer was a 30 day money back guarantee to Ms. R [REDACTED]
> to enable her to review the services provided to her by the
> membership. If after reviewing the membership and it did not meet her
> needs, she could cancel within the first 30 days and any fees billed
> would be refunded to her.

> The verification portion of the
> telephone conversations are
> tape-record, with the customer's consent of
> course. The tape recording
> of both of these conversations between Ms. R [REDACTED] and the
> Verifier are available
> and I will be happy to hold it at my desk for fifteen days
> from the date of
> this letter. If you would care to hear the tape
> recordings, you may contact me
> at the number listed below and I will be happy to play them
> for you.

> Our records reflect that both
> memberships were canceled on September
> 21, 2009. A refund check in the amount of \$38.85 was
> issued for the Savings2Go
> membership and another check for \$39.80 was issued for the
> PlanPlus membership.
> You will receive the checks under separate cover within 10
> to 15 business days.

>
>
>
>
> We extend our sincere condolences for
> your loss. Please do not
> hesitate to contact me if I can be of further
> assistance. I may be reached toll
> free at 1-800-527-5517, option 2 or by fax at
> 072-881-4072.

>
>
>
> Sincerely,

>
> Patsy Redwine

>
> Consumer Affairs Administrator

Redwine, Patsy

From: Redwine, Patsy
Sent: Tuesday, October 06, 2009 3:32 PM
To: 'danr [REDACTED]'
Subject: Savings2Go and PlanPlus

October 6, 2009

Dan R [REDACTED]
Via Email: danr [REDACTED]

Member: J [REDACTED] R [REDACTED]
Membership Numbers: Savings2Go 0551207840
PlanPlus 0162209316

Dear Mr R [REDACTED]

This is in response to your email dated September 30, 2009. I do hope the following information proves beneficial.

According to our records, the memberships were authorized by J [REDACTED] R [REDACTED]. However, in the interest of good customer relations, we have issued additional refund checks in the amount of \$259.00 for Saving2Go and \$79.60 for PlanPlus. This represents a full refund for both memberships. You should receive the refund checks within 10 to 15 business days.

Please feel free to contact me if I can be of further assistance. I may be reached toll free at 1-800-527-5517, option 2 or by fax at 072-881-4072.

Sincerely,

Patsy Redwine
Consumer Affairs Administrator

10/06/2009

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel.
THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA,

Plaintiff,

v.

VERTRUE, INCORPORATED, et al.,

Defendants.

)
)
) Equity No. EQ 53486
)
)
)

**RULING ON
PLAINTIFF'S THIRD
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

I. INTRODUCTION

This case comes before the Court on the Attorney General's Third Motion for Partial Summary Judgment against Defendant Adaptive Marketing, LLC (Adaptive), filed August 10, 2009. Adaptive filed a timely Resistance on August 28, 2009, the Attorney General filed a timely Reply on September 8, 2009, and the Court heard oral argument on September 9, 2009.

In its pending summary judgment motion, the Attorney General seeks a ruling that Adaptive's Internet sales of membership programs to Iowans were subject to, but failed to comply with, the requirements of the Buying Club Memberships Law, Iowa Code Ch. 552A (hereinafter the BCL); and that Adaptive's telephone sales of membership programs to Iowans, which this Court has previously ruled are subject to the BCL,¹ failed to comply with that law. In its Resistance, Adaptive challenges numerous legal interpretations put forward by the Attorney General, at least some of which have already been adopted by this Court. However, Adaptive does not challenge the Attorney General's contention that the issues in question are ripe for

¹ See this Court's March 11, 2009 Ruling on Plaintiff's Second Motion For Partial Summary Judgment.

summary judgment, and the Court finds that there is no factual dispute that would prevent a ruling on the legal issues raised in the Attorney General's pending motion.

II. FINDINGS

The Court finds that Adaptive has marketed buying club memberships to Iowa residents through telephone solicitations and over the Internet, resulting in sales to Iowans and the payment of membership charges by Iowans.

A. Applicability of the BCL to telephone sales

As to telephone sales, this Court has previously ruled that such sales are subject to the requirements of the BCL. *See* Rulings of July 12, 2007 and March 11, 2009. In previous rulings, the Court has addressed several of the legal challenges Adaptive presents in its current Resistance. The Court has previously determined that the BCL applies to a broad range of membership sales, and does not exempt sales made by mail or telephone; that the BCL's coverage of sales and offers of sale to the public generally bring the marketing activities in question within the ambit of the BCL, in light of Iowa Supreme Court precedent;² that although the membership marketing over the telephone may be rendered more difficult by having to comply with the BCL, compliance is not, as Defendants have asserted, impossible; that the BCL's exemption for businesses that sell memberships for no more than \$50 a year does not serve to exempt the membership sales at issue; and that neither the Dormant Commerce Clause nor the Due Process strictures on vagueness are violated by application of the BCL to telephone or direct mail sales of memberships. Adaptive renews the earlier challenges to each of these rulings, or, in the case of the Dormant Commerce Clause, reserves its right to address the issue further at trial. Adaptive has also raised the additional argument that the legislative history of the

² *See Iowa Farmers Purchasing Assn. v. Huff*, 260 N.W.2d 824 (Iowa 1977).

BCL does not support the Court's prior rulings, and that the Court's rulings cannot stand unless the legislative history supports a finding that the statute was intended to combat fraud.

Defendant's grounds for the inapplicability of the BCL to its marketing program have shifted several times during the course of the litigation. As the Court has ruled against each of its arguments, defendant has searched to find a new position. What defendant perceives to be the legislative history of the BCL represents its latest argument. While combating fraud may not be specifically mentioned in the materials cited by defendant, it is inconceivable that it was not a factor in the collective minds of the legislators who adopted the BCL. The Court, having reviewed Adaptive's various legal arguments and other submissions, finds that there is no reason to reverse any of the earlier rulings. The Court therefore reaffirms such rulings.

B. Applicability of the BCL to Internet sales

Although this Court has previously ruled regarding the applicability of the BCL to direct mail and to telephone solicitations, it has not previously addressed Internet marketing. As noted above, the Vertrue Defendants have argued that the exemption in the Door-to-Door Sales Act (DDSA) for transactions conducted entirely by phone or by mail should be interpreted to limit application of the BCL, an argument that the Court has rejected based on the plain language applying the BCL's constraints irrespective of the place or manner of sale. Similarly, there appears to be no basis for exempting Internet transactions, which are not excluded in any fashion by the applicable statutory language. Therefore, the Court adopts its earlier legal interpretations and holds that Adaptive's Internet sales of buying club memberships are subject to the requirements of the BCL.

C. Telephone and Internet sales: Non-compliance with the BCL

The remaining matter to be decided is whether the telephone and Internet sales at issue in this summary judgment motion comply with the BCL requirements to which they are subject.

There appears to be no dispute as to the content or use of the solicitations before the Court. Based upon the undisputed facts, neither the telephone solicitations nor the Internet solicitations complied with the Buying Club Law. None of the solicitations included the following statement, which is required to be provided in boldface type at least 10 points in size: **"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."** Iowa Code §§ 552A.3 and 555A.2.

Neither did any of the sale transactions, telephone or Internet, include the above-referenced Anotice of cancellation form explaining the consumer's statutory right of cancellation in greater detail. Iowa Code §§ 552A.3 and 555A.3. The content of that notice form is prescribed by statute, and is required to meet certain specifications (e.g., boldface, ten-point type, etc.). But nothing approaching the required notice is contained within the materials at issue. The Court further notes that these transactions appear to bind the consumers to a membership without a complying written contract signed by the purchaser, in further violation of the BCL. Iowa Code § 552A.3. The required contracts are required to clearly and conspicuously disclose the duration of the membership in boldface type of a minimum size of fourteen points. Iowa Code § 552A.4. Nothing approaching such a disclosure appears in the transactions at issue.

III. ORDER

IT IS THEREFORE ORDERED that Plaintiff's Third Motion For Partial Summary Judgment (the Motion) is granted. The Court finds that the Buying Club Law, Iowa Code Ch. 552A, applies to the Internet solicitations for Adaptive membership programs exemplified by the Internet solicitations presented in connection with the Motion; that the Buying Club Law applies to the telephone solicitations for Adaptive membership programs exemplified by the telephone solicitations presented in connection with the Motion; and that such Internet and telephone

solicitations violated the Buying Club Law by failing to comply with the requirements of Iowa Code §§ 552A.3 & 4, and 555A.2 - 4.

SO ORDERED this 5th day of October 2009.

ROBERT A. HUTCHISON, JUDGE
Fifth Judicial District of Iowa

Copies to:

Steve St. Clair
Jeffrey Thompson
Julia Kim
Assistant Attorneys General
Hoover Building, 2nd Floor
Des Moines, IA 50319

Michael Dee
666 Grand Ave., Suite 2000
Des Moines, IA 50309-2510

Robert Horowitz
Toby Soli
Greenberg Traurig, LLP
MetLife Bldg.
200 Park Ave.
New York, NY 10166

A. John Pappalardo
Greenberg Traurig, LLP
One International Place
Boston, MA 02110

AFFIDAVIT OF AL PERALES

I, Al Perales, being duly sworn on oath, state as follows:

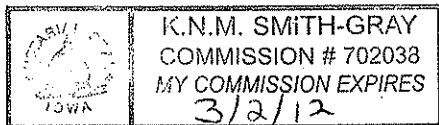
1. I am an Investigator in the Consumer Protection Division of the Office of the Iowa Attorney General, a position I have held since November 2006.
2. In the above capacity, I have been assigned to handle complaints relating to, and investigate the practices of, Stonebridge Benefit Services, Inc., as well as other comparable marketers of membership programs.
3. I have read the foregoing Petition in Equity. I have reviewed the relevant Consumer Protection Division files relating to this matter and I have spoken with and/or reviewed the written complaints of the Iowa consumers to whom the Petition refers. I can attest to my belief that the statements contained in paragraphs 16 through 22 are accurate, and that the email complaint attached to the Petition as Attachment I was provided to the Consumer Protection Division by Defendant in response to a Consumer Fraud Act subpoena on or about April 18, 2011.

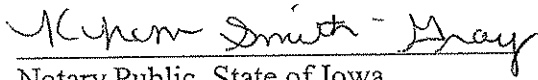
The above is true and correct to the best of my knowledge.


Al Perales

Signed and sworn to by Al Perales before the undersigned Iowa Notary Public on this

16 day of August, 2011.




Notary Public, State of Iowa

ATTACHMENT III